

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE CONCURRENT MEMORIAL 1005

A CONCURRENT MEMORIAL

URGING THE CONGRESS OF THE UNITED STATES TO SEPARATE THE NINTH CIRCUIT COURT OF APPEALS INTO TWO CIRCUITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 To the Congress of the United States of America:

2 Your memorialist respectfully represents:

3 Whereas, the Ninth Circuit contained three per cent of the nation's
4 population when the Evarts Act in 1891 created the circuit court of appeals
5 but currently contains nearly twenty per cent of the nation's population; and

6 Whereas, the Ninth Circuit is the largest circuit court in the United
7 States, consisting of nine states, compared to the majority of the nation's
8 circuit courts, each consisting of four or fewer states; and

9 Whereas, in 2006 there were 13,828 appeal cases filed in the Ninth
10 Circuit compared to an average of 5,789 appeal cases filed in the other
11 eleven circuit courts, which restricts the circuit judges from reading all of
12 the opinions issued by their own court, greatly diminishing consistency
13 within the court and hampering the ability to reconcile rulings of the court;
14 and

15 Whereas, the Ninth Circuit takes 15.5 months to decide cases, exceeding
16 the national average of 12.1 months from notice of appeal to disposition; and

17 Whereas, the Ninth Circuit has twenty-eight circuit judges, compared to
18 the second highest number, seventeen circuit judges in the Fifth Circuit; and

19 Whereas, the large number of circuit judges results in thousands of
20 three-judge panel combinations restricting interaction among the individual
21 circuit judges and producing panel-driven results that affect the entire
22 circuit; and

23 Whereas, the other circuit courts have a full en banc procedure that
24 includes every active member of the court, unlike the Ninth Circuit, which
25 has a limited en banc procedure due to its size and caseload; and

26 Whereas, many cases are never reheard in the Ninth Circuit's limited en
27 banc procedure because of the difficulty in obtaining a majority of all
28 twenty-eight active judges despite significant votes, leading to the court of
29 appeals' high reversal rate in the Supreme Court; and

30 Whereas, the citizens in the State of Arizona within the Ninth Circuit
31 perceive the federal appellate judiciary as a remote institution that is
32 unfamiliar with the problems and points of view of Arizona, eroding public
33 confidence.

34 Wherefore, your memorialist, the Senate of the State of Arizona, the House of
35 Representatives concurring, prays:

36 1. That the Ninth Circuit Court of Appeals be separated.

37 2. That judges be appointed in proportion to the division and size of
38 the new circuits.

39 3. That the Secretary of State of the State of Arizona transmit copies
40 of this Memorial to the President of the United States Senate, the Speaker of
41 the United States House of Representatives and each other Member of the
42 United States Senate and the United States House of Representatives.